

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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RICHARD WEISS,	:	
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	:	
Plaintiff,	:	22 Civ. 4669 (LGS)
-against-	:	
	:	
COMMISSIONER OF SOCIAL SECURITY,	:	<u>ORDER</u>
	:	
Defendants.	:	
	:	
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LORNA G. SCHOFIELD, District Judge:

WHEREAS, in a Report and Recommendation (the “Report”) dated March 5, 2025, Magistrate Judge Sarah Netburn recommended that Plaintiff’s counsel be awarded \$39,795.00 in attorney’s fees under 42 U.S.C. § 406(b). No objection to the Report was filed.

WHEREAS, the recommendation in the Report was based on a finding that Plaintiff’s counsel’s de facto hourly rate of \$1,259.34 and total billing of 31.6 hours are reasonable. Attorneys’ fees may become unreasonable if they constitute “a windfall,” meaning that “the benefits are large in comparison to the amount of time counsel spent on the case.” *Fields v. Kijakazi*, 24 F.4th 845, 853 (2d Cir. 2022).<sup>1</sup> The Report finds that the de facto hourly rate is within the range that courts in this District typically award, and that the billed hours are “within the standard range of hours for a Social Security action.”

WHEREAS, the recommendation in the Report is further based on a finding that Plaintiff’s counsel can recover the full amount and need not remit any fees to Plaintiff. An attorney may recover fees under the Equal Access to Justice (the “EAJA”) and § 406(b), and, if

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<sup>1</sup> Unless otherwise indicated, in quoting cases, all internal quotation marks, footnotes and citations are omitted, and all alterations are adopted.

successful under both, must “refund to the [client] the amount of the smaller fee.” *Gisbrecht v. Branhart*, 535 U.S. 789, 796 (2002); *accord Gugliucciello v. Kijakazi*, No. 23 Civ. 4251, 2024 WL 5078286, at \*1 n.2 (S.D.N.Y. Dec. 11, 2024). Such a refund is not applicable here because Plaintiff’s counsel did not receive fees under the EAJA.

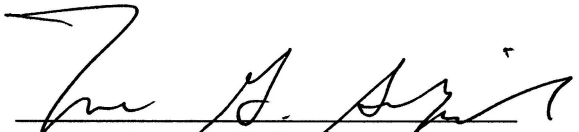
WHEREAS, in reviewing a magistrate judge’s report and recommendation, a district judge “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). “In a case such as this one, where no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record.” *Kuan v. Notoriety Grp. LLC*, No. 22 Civ. 1583, 2023 WL 3936749, at \*1 (S.D.N.Y. June 9, 2023).

WHEREAS, the Court finds no clear error on the face of the record as to the Report. It is hereby

**ORDERED and ADJUDGED** that the Report is **ADOPTED**. Plaintiff’s counsel is awarded \$39,795.00 in attorney’s fees.

The Clerk of Court is respectfully directed to close the motion at Dkt. No. 30.

Dated: June 24, 2024  
New York, New York

  
**LORNA G. SCHOFIELD**  
**UNITED STATES DISTRICT JUDGE**